

**000431**

## DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:

April 23, 2007

103

9/25

~~SUBJECT: Balboa Ave. Corridor Improvements--Consultant Contract Amendment with Kimley-Horn, Inc.~~**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Kimley-Horn, Inc.

Amount of this action: \$ 24,700

Original Contract Amount: \$ 24,800

Cumulative Amount: \$ 49,500

Funding Source: City

**SUBCONSULTANT PARTICIPATION**

No subconsultant participation on this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Kimley-Horn, Inc. submitted a Work Force Report dated December 29, 2006 indicating a total of 52 employees. The consultant's Work Force Analysis reflects under representations in the following:

Blacks in A&amp;E, Science &amp; Computer

Hispanics in Technical

Filipinos in A&amp;E, Science &amp; Computer and Technical

Females in A&amp;E, Science &amp; Computer and Technical

The firm has under representations in the Filipino A&E, Science & Computer and Technical categories; however, the participation levels in these overall categories exceed the goals.

Staff recently requested consultant to submit an EO Plan which describes equal employment policies and practices including reasonable goals and timetables that are expected to remedy the identified under representations. The EO Plan has been submitted and is currently under review.

**ADDITIONAL COMMENTS**

The Work Force Analysis is attached.

MAH

File: Admin WOFO 2000

Date WOFO Submitted: 12/29/2006  
Input by: mhGoals reflect statistical labor force  
availability for the following: 2000 CLFA  
San Diego, CA

City of San Diego/Equal Opportunity Contracting

**WORK FORCE ANALYSIS REPORT**

FOR

Company: Kimley-Horn and Associates, Inc.

**I. TOTAL WORK FORCE:**

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	0	1	1	0	0		
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	1	0	0	0		
A&E, Science, Computer	2.8%	0	0	7.3%	5	0	16.2%	3	2	0.3%	0	0	16.2%	0	0	21	5	0	0		
Technical	6.6%	2	0	14.8%	0	0	17.2%	2	0	0.4%	0	0	17.2%	0	0	3	2	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	1	0.6%	0	0	8.8%	0	0	0	3	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	20	0	0	0		
TOTAL		2	0		5	0		5	3		0	0		0	0		26	11		0	0

**HOW TO READ TOTAL WORK FORCE SECTION:**

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees.

Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial  
Professional  
A&E, Science, Computer  
Technical  
Sales  
Administrative Support  
Services  
Crafts  
Operative Workers  
Transportation  
Laborers

TOTAL EMPLOYEES				Female Goals
ALL	M	F		
12	1	1		39.8%
1	1	0		59.5%
36	29	7		22.3%
9	7	2		49.0%
0	0	0		49.4%
4	0	4		73.2%
0	0	0		62.3%
0	0	0		8.6%
0	0	0		36.7%
0	0	0		15.2%
0	0	0		11.1%
<b>TOTAL</b>	<b>52</b>	<b>38</b>	<b>14</b>	

**HOW TO READ EMPLOYMENT ANALYSIS SECTION:**

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

**II. EMPLOYMENT ANALYSIS**

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.07	0	N/A	0.24	0	N/A	0.12	0	N/A	0.01	0	N/A	0.12	0	N/A	0.80	0	N/A
Professional	0.04	0	N/A	0.13	0	N/A	0.07	0	N/A	0.01	0	N/A	0.07	0	N/A	0.60	0	N/A
A&E, Science, Computer	1.01	0	(1.01)	2.63	5	2.37	5.83	5	N/A	0.11	0	N/A	5.83	0	(5.83)	8.03	7	(1.03)
Technical	0.59	2	1.41	1.33	0	(1.33)	1.55	2	N/A	0.04	0	N/A	1.55	0	(1.55)	4.41	2	(2.41)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.28	0	N/A	0.83	0	N/A	0.35	1	N/A	0.02	0	N/A	0.35	0	N/A	2.93	4	1.07
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

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REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

2700726

TO:  
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):  
Engineering & Capital Projects3. DATE:  
4/13/2007

## 4. SUBJECT:

Balboa Ave. Corridor Improvements-Consultant Contract Amendment with Kimley-Horn, Inc.

## 5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Dave Zoumaras 533-3138

WH

## 6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

r. Abi Palaseyed 3-3756

7. CHECK BOX IF REPORT TO  
COUNCIL IS ATTACHED ☐

## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	38978				9. ADDITIONAL INFORMATION / ESTIMATED COST: Previous Contract: \$24,800 This Amendment: <b>\$24,700</b> Total: \$49,500
DEPT.	30244				
ORGANIZATION	107				
OBJECT ACCOUNT	4279				
JOB ORDER	522741				
C.I.P. NUMBER	52-274.0				
AMOUNT	\$24,700.00				

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	4/17/07	8	DEPUTY CHIEF	<i>[Signature]</i>	5/23/07
2	EAS	<i>[Signature]</i>	4/19/07	9	COO	- Plus required -	
3	EOCP	<i>[Signature]</i>	4/24/07	10	CITY ATTORNEY	<i>[Signature]</i>	9/6/07
4	LIAISON OFFICE	<i>[Signature]</i>	4/26/07	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/7/07
5	CIP/PM	<i>[Signature]</i>	7/30/07		DOCKET COORD: _____ COUNCIL LIAISON: _____		
6	AUDITOR	<i>[Signature]</i>	5/4/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO: _____	COUNCIL DATE: 9/25/07	

## 11. PREPARATION OF:

☐ RESOLUTION(S)☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Mayor or his representative to execute Amendment #1, in the amount of \$ 24,700, to the existing consulting services contract with Kimley-Horn, Inc. for preliminary engineering for Balboa Avenue Corridor Improvements project, CIP 52-274.0; and

(Continued)

## 11A. STAFF RECOMMENDATIONS:

Adopt the resolutions

## 12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 6

COMMUNITY AREA(S): Kearny Mesa

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section §15060(C) (3).

HOUSING IMPACT: None

OTHER ISSUES: None

ATTACHMENTS: Consultant Contract Amendment #1

- ~~2. Authorizing the expenditure of \$24,700, Fund 38978, CIP 52-274.0, Balboa Avenue Corridor Improvements (job order 522741), for the amendment to the agreement with Kimley-Horn, Inc; and~~
3. Authorizing the Auditor and Comptrollers, to return excess budgeted funds, if any, to the appropriate reserves.

**EXECUTIVE SUMMARY SHEET**

CITY OF SAN DIEGO

DATE ISSUED: April 13, 2007 REPORT NO:  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Engineering and Capital Projects  
SUBJECT: Balboa Avenue Corridor Improvements - Consultant  
Contract Amendment with Kimley-Horn, Inc.  
COUNCIL DISTRICT(S): 6  
CONTACT/PHONE NUMBER: Abi Palaseyed 3-3756

**REQUESTED ACTION:**

Executing contract amendment #1 with Kimley-Horn, Inc., for the preliminary engineering services for Balboa Avenue Corridor between I-805 and I-15.

**STAFF RECOMMENDATION:**

Adopt the resolutions.

**EXECUTIVE SUMMARY:**

In May 2001 the City entered into a Cooperative Agreement with the State of California to transfer State Route 274 to the City of San Diego. State Route 274 consists entirely of Balboa Avenue from Interstate 5 to Interstate 15. As part of the Cooperative Agreement, Caltrans provided funding to bring Balboa Avenue up to City standards. The City awarded a consultant contract to Kimley-Horn and Associates, Inc. to analyze existing and future traffic conditions on Balboa Avenue between I-805 and I-15, and to identify potential improvements. The contract amendment will include the preliminary engineering and the prioritization of the recommended improvements.

**FISCAL CONSIDERATIONS:**

The original contract agreement with Kimley-Horn, Inc. was for \$24,800. The contract amendment #1 with Kimley-Horn, Inc. for preliminary engineering is for \$24,700, for a total expenditure of \$49,500. Funds for the action are available in Fund 38978, CIP number 52-274.0

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

Council Resolution R-294888 dated May 22, 2001 authorized the Cooperative Agreement with the State of California and acceptance of funding for Capital Improvements and maintenance on State Route 274.

Council Resolution R-298114 dated June 24, 2003 authorized the transfer of \$275,000 from CIP 52-274.0 to CIP 52-496.0, Balboa Avenue Streetscape Improvements.

Council Resolution R-300893 dated October 10, 2005 authorized the transfer of \$1,070,855 from CIP 52-274.0 to CIP 52-496.0, Balboa Avenue Streetscape Improvements and \$500,000 to special interest bearing funds for the maintenance of Balboa Avenue Streetscape Improvements. Council Resolution R-301364 dated April 26, 2006 authorized the transfer, appropriation, and expenditure of \$550,000 from CIP 52-274.0 to CIP 52-496.0.

Council Resolution R-302335 dated February 14, 2007 authorized the transfer of \$300,000 from CIP 52-274.0 to CIP 52-496.0, Balboa Avenue Streetscape Improvements to special interest

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bearing funds for the maintenance of Balboa Avenue Streetscape Improvements and \$130,000 to CIP 52-496.0

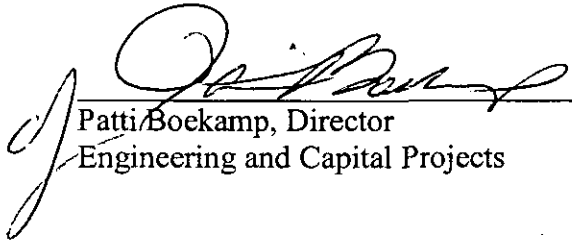
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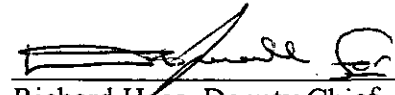
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Kearny Mesa Planning Group

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Kearny Mesa Community,  
Kimley-Horn, Inc.

  
Patti Boekamp, Director  
Engineering and Capital Projects

  
Richard Haas, Deputy Chief  
Public Works

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The City of San Diego  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 27007.26

ORIGINATING

DEPT. NO.:

547

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: May 3, 2007 By: \_\_\_\_\_

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$24,700.00Vendor: Kimley-Horn, IncPurpose: To authorize the expenditure of funds for the purpose of executing the first amendment to the consulting contract Balboa Avenue Corridor Improvement Project.Date: May 3, 2007 By: 

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	30244	30244	107	4279	522741				24,700.00
TOTAL										\$24,700.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐AC 27007.26

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
DIEGO AUTHORIZING A FIRST AMENDMENT TO AN  
AGREEMENT WITH KIMLEY-HORN, INC. FOR THE  
BALBOA AVENUE CORRIDOR IMPROVEMENTS IN THE  
KEARNY MESA COMMUNITY PLANNING AREA.

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to an Agreement with Kimley-Horn increasing the maximum contract amount \$24,700 from \$24,800 to \$49,500, for preliminary engineering services for the Balboa Avenue Corridor Improvements Project, CIP No. 52-274.0, [Project] under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR \_\_\_\_\_.
2. That the expenditure of an amount not to exceed \$24,700 from CIP No. 52-274.0, Balboa Avenue Corridor Improvements Project, Fund No. 38978, is authorized for the First Amendment to the Agreement with Kimley-Horn for the above referenced Project.
3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.



BE IT FURTHER RESOLVED, that this activity is not a "project" and is therefore

~~exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).~~

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

\_\_\_\_\_  
Peter A. Mesich  
Deputy City Attorney

PAM:cfq

05/24/07

Aud.Cert.:2700726

Or.Dept:E&CP

R-2007-1175

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

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**FIRST AMENDMENT TO AGREEMENT**

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This First Amendment to the *Balboa Corridor Study between I-805 and I-15* dated - \_\_\_\_\_ [Agreement], is hereby entered into by and between the City of San Diego [City], a municipal corporation, and *Kimley-Horn and Associates, Inc.* [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. C-13937, to provide *Traffic Analysis* for *Balboa Avenue Corridor Between I-805 and I-15* [Project].

B. The City desires to execute a First Amendment to the Agreement for the Consultant to provide additional Professional Services, as indicated in the expanded Scope of Services [Exhibit A-1], for a compensation amount not to exceed **\$24,700.00**, with total compensation for services provided under the Agreement not to exceed **\$49,500.00**.

C. Consultant desires to provide the services required under this First Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the Parties agree to modify the Agreement, which is incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-1] at the direction of the City on a fixed fee basis as specifically enumerated in the Compensation and Fee Schedule [Exhibit B-1], and in accordance to the Time Schedule [Exhibit C-1]."

2. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this First Amendment to the Agreement, in an amount not

~~to exceed \$24,700.00, as set forth in the Compensation and Fee Schedule [Exhibit B-1]. The~~  
 Consultant shall be entitled to compensation for Professional Services under this First  
 Amendment to the Agreement, whether within the Scope of Services or as Additional Services,  
 based on the Compensation and Fee Schedule. For the duration of this First Amendment to the  
 Agreement, the Consultant shall not be entitled to fees which exceed the Compensation and Fee  
 Schedule. The Total Compensation to Consultant under this Agreement shall not exceed  
 \$49,500.00.

3. ~~Section 3.3 (additional costs) is amended to read as follows:~~

~~ADD: "If the City requires additional Professional Services [Additional Services]  
 beyond the Scope of Services performed pursuant to this First Amendment to the Agreement,  
 except for additional costs as described in Section 3 of this Agreement, the City shall pay  
 Consultant an additional fee not to exceed [\*\$ amount\*]. The City and the Consultant must  
 agree in writing upon such fee for a specific task based on the Fee Schedule prior to the  
 Consultant beginning the Additional Services."~~

4. Delete Article VI and amend to read as follows:

**6.1 Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

## **6.2 Design Professional Services Indemnification and Defense.**

**6.2.1 Design Professional Services Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

**6.2.2 Design Professional Services Defense.** Parties will work in good faith to

~~procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.~~

**6.3 Insurance.** The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

**6.4 Enforcement Costs.** The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

5. Article VIII is amended to read as follows:

ADD: "**8.20 San Diego's Strong Mayor Form of Governance.** All references to 'City Manager' in this Agreement and all subsequent amendments thereto shall be deemed to refer to 'Mayor.' This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter."

6. The following attachments are incorporated herein by reference as follows:

Exhibits A-1 (Scope of Services), B-1 (Compensation and Fee Schedule), and C-1 (Time Schedule).

7. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

~~IN WITNESS WHEREOF, this First Amendment to the *Balboa Corridor Study between*~~

*I-805 and I-15* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Resolution No. R-\_\_\_\_\_, authorizing such execution, and by Consultant.

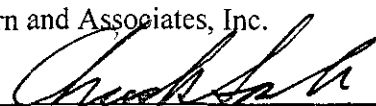
IN WITNESS WHEREOF, this First Amendment to the *Balboa Corridor Study between I-805 and I-15* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to San Diego Municipal Code section 22.3223 authorizing such execution, and by the Consultant.

THE CITY OF SAN DIEGO  
Mayor or Designee

By: \_\_\_\_\_

Date: \_\_\_\_\_

Kimley-Horn and Associates, Inc.

By:   
Name: Chuck Spinks  
Title: Vice President  
Date: 09/04/07

I HEREBY APPROVE the form and legality of the foregoing Amendment on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

MICHAEL AGUIRRE, City Attorney

By: \_\_\_\_\_  
Peter Mesich  
Deputy City Attorney

## SCOPE OF SERVICES

### Scope of Services

*Task 1 – Preliminary Engineering:* Using the recommended improvements that KHA developed in the corridor study and aerial drawings provided by the City, we will provide preliminary construction costs and exhibits for selected scenarios. Preliminary Engineering is defined as using conceptual level drawings (no survey) to develop a range of construction estimates. Ranges will be developed after the estimates are completed to be able to use applicable numbers.

Based on the corridor study and the recommended improvements, the following locations will be analyzed:

- Balboa Avenue and Convoy Street
- Balboa Avenue and Mercury Street
- Balboa Avenue and Ruffin Road
- *Balboa Avenue and Ponderosa Ave*
- Balboa Avenue and Ruffner Street
- The segment from along Balboa Avenue between I-805 and Convoy Street
- Balboa Avenue between the I-805 freeway and the I-15 freeway: we will develop an estimate for raised medians along the corridor including landscaping. The estimate will be based on the proposed median improvements at each intersection recommended in the corridor study.

*Task 2 – Prioritization:* Based on the “Council Policy for Prioritizing Transportation and Drainage Capital Improvement Program Projects” provided by the City (Dated December 5, 2006), we will use the Project Criteria to create a matrix that prioritizes each improvement scenario. This will include the following:

1. Health & Safety
2. Capacity & Service/Mobility
3. Project Cost and Gant Funding Opportunity
4. Revitalization, Community Support & Community Plan Compliance
5. Multiple Category Benefit
6. Reduces Maintenance
7. Project Readiness

In addition to this matrix, a summary will be included with any assumptions that were used.

*Task 3 – Documentation:* Summarize the key assumptions, preliminary engineering construction costs, and prioritization in a draft technical memo with appropriate exhibits (line drawings at no scale).

*Deliverable:* Provide four copies to City staff for review and comment.

*Task 4 – Meetings:* Attend up to three project-related meetings to present and discuss the results.

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~~Task-5 - Response to Comments: Respond to a consolidated local agency comments and~~  
provide a final technical memo. This task assumes up to 20 hours of final response time,  
above that will be viewed as an additional service.

*Deliverable: Provide a final technical memo to City staff.*

**TIME SCHEDULE**

**Schedule**

The following tasks will be completed after the contract is officially signed by both parties:

Task 1: Preliminary Engineering – 4 weeks

City Review – 2 weeks

Task 2: Prioritization – 2 weeks after receiving City comments

City Review – 2 weeks

Task 5: Response to comments – 1 week after receiving City comments



**COMPENSATION AND FEE SCHEDULE**

**Fee and Billing**

KHA will perform the services described in Tasks 1-5 in the Scope of Services for a lump sum fee of **\$24,700**.

000451

CITY OF SAN DIEGO  
ENGINEERING AND CAPITAL PROJECTS DEPARTMENT  
TRANSPORTATION ENGINEERING DIVISION

1010 SECOND AVENUE, SUITE 1200

SAN DIEGO, CALIFORNIA 92101

PH: (619) 533-3791

FAX: (619) 533-3071

MS 612

TRANSMITTAL

DATE: September 4, 2007

TO: City Attorney's Office

ATTENTION: Peter Mesich, Deputy City Attorney

RE: Balboa Avenue Corridor / Kimley-Horn Amendment to Agreement


We are transmitting to you herewith:

5 – Original Contract Amendment #1 with “wet” signatures from Kimley-Horn

These are:

- ☒ ( x ) For Approval
- ☐ ( ) Revised for Approval
- ☐ ( ) Disapproved. Please Revise and Re-submit.
- ☐ ( ) Approved as Noted
- ☐ ( ) One Copy For Your Files
- ☐ ( ) Please address plan check comments and return redlines with corrected plans.

Remarks: Please sign Amendment and 1472.



Dean Marsden  
Project Engineer

**FIXED FEE AGREEMENT BETWEEN**  
**~~THE CITY OF SAN DIEGO~~**  
**AND KIMLEY-HORN AND ASSOCIATES, INC.**  
**FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Kimley-Horn and Associates, Inc. for the Consultant to provide Professional Services to the City for the Balboa Avenue Corridor Study Project.

**ARTICLE I**

**PROFESSIONAL SERVICES**

**1.1 Scope of Services.** The Consultant shall perform the Professional Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City.

**1.2 Competitive Bidding.** The Consultant shall endeavor to ensure that any plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source.

**ARTICLE II**

**DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective until completion of the Scope of Services.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services is set forth in the Time Schedule [Exhibit B]. Delays caused by unforeseen events beyond the control of the Parties, including but not limited to natural disasters, adverse weather, and acts of third parties, may entitle the Consultant to a reasonable extension of time, but shall not entitle the Consultant to damages or additional compensation. The City must approve of any such extensions in time. Consultant shall not be entitled to an extension of time for delays caused by the acts or omissions of the Consultant.

**2.3 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant.

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## ARTICLE III

### COMPENSATION

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, for a maximum fixed fee of \$24,800. The compensation for the Scope of Services shall not exceed \$21,000, and the compensation for Additional Services (described in Section 3.3), if any, shall not exceed \$3,800.

**3.2 Manner of Payment.** The City shall pay the Consultant in accordance with the Compensation and Fee Schedule [Exhibit C]. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

**3.3 Additional Services.** The City may require that the Consultant perform additional Professional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule. The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.2.

**3.4 Eighty Percent Notification.** The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement.

## ARTICLE IV

### CONSULTANT'S OBLIGATIONS

**4.1 Industry Standards.** The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional Civil Engineering Consulting firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

**4.2 Maintenance of Records.** The Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of the Professional Services for the Project, throughout the performance of the Professional Services and for a period of ten years following completion of the Professional Services for the Project. The Consultant further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.

**4.3 Insurance.** The Consultant shall not begin the Professional Services under this Agreement until it has obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City. Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

**4.3.1 Types of Insurance.** At all times during the term of this Agreement, the Consultant shall maintain insurance coverages in the amounts required by the City as follows: Commercial General Liability, Commercial Automobile Liability, Workers' Compensation, and Architects & Engineers Professional Liability. For all policies except Workers' Compensation and Professional Liability, the Consultant shall name the City as an additional insured, but only for liability arising out of Professional Services performed under this Agreement. All deductibles on any policy shall be the responsibility of the Consultant. The policies shall be primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

**4.4 Drug-Free Workplace.** The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference.

**4.5 Title 24/Americans with Disabilities Act Requirements.** The Consultant shall warrant and certify that any Project plans and specifications prepared in accordance with this Agreement meet all current California Building Standards Code, California Code of Regulations, Title 24 [Title 24] and Americans with Disabilities Act Accessibility Guidelines [ADAAG] requirements, and are in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

**4.6 Non-Discrimination Requirements.**

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.** The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subconsultants comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subconsultants

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**4.6.2 Non-Discrimination Ordinance.** ~~The Consultant shall not discriminate~~ on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

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**4.6.3 Compliance Investigations.** Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.7 Design-Build Competition Eligibility.** Any architectural firms, engineering firms, consultants, or individuals retained by the City to assist the City with developing criteria or preparing the preliminary design or the request for proposals for a Design-Build competition shall not be eligible to participate with any Design-Build Entity in that Design-Build competition. Additionally, the City may determine in its sole discretion that a subconsultant hired to assist with a Design-Build competition, regardless of whether the subconsultant was hired by the City or hired by an architectural firm, engineering firm, consultant, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition.

**4.8 Notification of Increased Construction Cost.** If, at any time prior to the City's approval of the final plans and specifications, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

**4.9 Storm Water Management Discharge Control.** The Consultant shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Consultant shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention

~~Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.~~

## ARTICLE V

[RESERVED]

## ARTICLE VI

### INDEMNIFICATION

**6.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, reasonable attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed involving this Project, except liability for Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active or sole negligence or sole willful misconduct of the City, its agents, officers or employees.

**6.2 Indemnification for Professional Services.** As to the Consultant's professional obligations, work or services involving this Project, the Consultant agrees to defend, indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultant's employees, agents or officers.

**6.3 Enforcement Costs.** The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Sections 6.1 and Section 6.2.

## ARTICLE VII

[RESERVED]

## ARTICLE VIII

### MISCELLANEOUS

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**8.1 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

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**8.2 Independent Contractors.** The Consultant and any Subconsultants employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

**8.3 Compliance with Controlling Law.** The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work [Exhibit D]. The client acknowledges that the laws and regulations of various governmental entities having jurisdiction over the project are sometimes in conflict, and in that circumstance the Consultant's sole obligation is to exercise the professional standard of care in an effort to resolve such conflicts. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

**8.4 Jurisdiction and Venue.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

**8.5 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**8.6 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: 1010 2<sup>nd</sup> Avenue Suite 1200 San Diego, CA 92101 and notice to the Consultant shall be addressed to: 517 Fourth Avenue Suite 301, San Diego, CA 92101.

**8.7 Exhibits Incorporated.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

**8.8 San Diego's Strong Mayor Form of Governance.** All references to "City Manager" in this Agreement and all subsequent amendments thereto shall be deemed to refer to



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DUPLICATE

ORIGINAL

~~"Mayor." This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to article XV of the City of San Diego City Charter.~~

**8.9 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

**8.10 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, this agreement for professional services for the Balboa Avenue Corridor Study Project is executed by the City of San Diego, acting by and through its Mayor or his designee and by the Consultant.

THE CITY OF SAN DIEGO

Dated: 10/6/06

By: 

Rick Reynolds  
Assistant Chief Operating Officer

I HEREBY CERTIFY that I can legally bind Kimley-Horn, and Associates, Inc. and that I have read all of this Agreement this 28 day of September, 2006.

By: 

Authorized Representative

DAVID SORENSON / V.P.

(Print Name and Title)

I HEREBY APPROVE the form and legality of the foregoing Agreement this 11 day of October, 2006.

MICHAEL J. AGUIRRE, City Attorney

By: 

Deputy City Attorney

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## SCOPE OF SERVICES

### Scope of Services

*Task 1 – Data Collection and Field Reconnaissance:* Obtain a.m. and p.m. peak-hour turning movement counts at up to 10 signalized intersections and 24-hour roadway counts at up to 16 roadway segments within the vicinity of the project site. In addition, observations of traffic during the morning and afternoon peak periods during a typical weekday would be conducted to determine existing travel patterns along the existing corridor. Conduct a field survey to determine the configuration and capacity of links in the study area. The field survey will be used to model the existing corridor and help to determine locations of future improvements.

*Task 2 – Capacity Analysis:* Conduct an intersection, roadway segment, and arterial analysis at the identified locations agreed upon in Task 1 for the existing traffic scenario. A growth factor will be applied to the traffic volumes for each turning movement based on the area to capture future (buildout) traffic. An intersection, roadway segment, and arterial analysis will be conducted for the future volumes.

*Task 3 – Potential Improvements:* Perform an intersection, roadway segment, and arterial analysis for up to three improvement scenarios (including existing and buildout).

*Task 4 – Documentation:* Summarize the key assumptions, findings, and possible improvements of the foregoing analysis in a draft traffic impact analysis with appropriate exhibits (line drawings at no scale) and appendices.

*Deliverable:* Provide two copies to City staff for review and comment.

*Task 5 – Meetings:* Attend up to three project-related meetings to present and discuss the results of the traffic analysis.

*Task 6 – Response to Comments:* Respond to a consolidated local agency comments to the draft traffic study and provide a final traffic study. This task assumes up to 20 hours of final response time, above that will be viewed as an additional service.

*Deliverable:* Provide a final traffic study to City staff.

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**TIME SCHEDULE****Schedule**

We will provide our services as expeditiously as practicable to meet a mutually agreed upon schedule. Traffic counts will be conducted within one week from notice to proceed. The traffic impact report will be completed within four weeks upon receiving all existing traffic count data.

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**COMPENSATION AND FEE SCHEDULE**

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**Fee and Billing**

KHA will perform the services described in Tasks 1-6 in the Scope of Services for a lump sum fee of **\$21,000**.

Direct reimbursable expenses such as express delivery services and other direct expenses will be billed at 1.15 times cost. An amount will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing. Technical use of computers for design, analysis, GIS, and graphics, etc. will be billed at \$25.00 per hour. All permitting, application, and similar project fees will be paid directly by the Client.

Fees will be invoiced monthly based upon the percentage of services performed as of the invoice date. Payment will be due within 25 days of the date of the invoice.

## CALIFORNIA LABOR CODE

## EXISTING LAW

**§ 1771. Payment of general prevailing rate**

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

## AMENDMENT

**§ 1720. Public works; use of public funds**

As used in this chapter, "public works" means:

(a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this subdivision, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(c) Street sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(e) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(f) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(Amended by Stats.1989, c. 278, § 1, eff. Aug. 7, 1989; Stats.2000, c. 881 (S.B.1999), § 1.)